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WYLD B. BRADLEY, Clerk

Supreme Court of the United States

October Term, 1956.

No. 278

JAMES P. MITCHELL, Secretary of Labor,
United States Department of Labor,*Petitioner,*KING EDWARD TOBACCO COMPANY OF FLORIDA
and MAY TOBACCO COMPANY,*Respondents.*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT**REPLY BRIEF OF RESPONDENT MAY
TOBACCO COMPANY.**

Mark F. Hughes

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Tobacco Company

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Department of Labor,

Petitioner,

vs.

KING EDWARD TOBACCO COMPANY OF FLORIDA and
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Respondents.

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OF APPEALS FOR THE FIFTH CIRCUIT.

REPLY BRIEF OF RESPONDENT MAY TOBACCO COMPANY.*

Petitioner's supplemental memorandum says, in effect, that May must suffer for any deficiencies in the record. This can only properly mean the *King Edward-May* record—not the *Budd* record, since May was not a party to the *Budd* action. There are no deficiencies in the proof in the *King Edward-May* record, in so far as it applies to May.

The only proof of *what actually occurs in the May packing plant* is in the affidavit of Fred L. May (RK 67-71).

* Petitioner had two weeks prior to the oral argument within which to file a reply brief and in that period found the time to prepare and file a "Supplemental Appendix in Reply."

None of its allegations is denied. It is impossible to read that affidavit without concluding that all of the activities in the packing plant were in aid of the natural curing and fermentation of the leaf in preparation for market and that the piling and re-piling of the tobacco and its ultimate sorting and baling involve simple manual labor and nothing else.

Petitioner also hints that May's is a big industrialized operation. Aside from the fact that size and mechanization are not controlling (*Maneja v. Waialua Agricultural Co.*, 349 U. S. 254, 261), at least 7 other farmers plant a greater acreage than May (RK, 84A). Its packing plant activities are totally lacking in any element of industrialization.

Petitioner's argument that the packing plant activities are incidental to cigar manufacturing is without substance. May is a farmer—not a cigar manufacturer. There is not the slightest suggestion in the record that it is in any way affiliated with any cigar manufacturer. Its packing plant activities are practices of a farmer preparing his tobacco for market. Who its customers are is beside the point.

Petitioner's conclusion, in effect, asks that the judgment be reversed even as to those respondents who can satisfy the Court that their employees come within the exemption of Section 13(a)(6). This suggestion to circumvent the statute is startling, to say the least. It is sought to be justified by the argument that such a holding will achieve the design of the Act. In other words, disregard of part of the Act will accomplish the purpose of the Act. A bizarre sort of interpretation of legislative intent, indeed! If the Court concludes that Section 13(a)(10) does not afford an exemption to owners of packing plants who bulk the tobacco

of others, the remedy is by legislation—not by depriving May of the 13(a)(6) exemption to which it is clearly entitled.

Respectfully submitted,

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Attorney for Respondent, May Tobacco Co.